

Exhibit 3

In the Matter of:

FTC, et al. v. Quincy Bioscience Holding, et al.

August 21, 2020

Mark Underwood - Individual - Confidential

Condensed Transcript with Word Index



For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

45

1 **Q. That's fine. I guess let me rephrase my**
2 **question.**

3 A. Okay.

4 **Q. After you and Mr. Underwood --**

5 A. I am Mr. Underwood.

6 **Q. Sorry, after you and Mr. Beaman receive**
7 **communications on regulatory matters, do the two of you**
8 **sit down to discuss the company's response?**

9 A. No, not without counsel.

10 **Q. But the two of you -- but the two of you and**
11 **counsel discuss these matters?**

12 A. Oh, yes, with counsel.

13 MR. CASTELLO: Objection.

14 THE WITNESS: Yes.

15 (Deposition Exhibit Number MU-28, Quincy
16 Bioscience Holding Company's Answers to the Federal
17 Trade Commission's Civil Investigative Demand
18 Interrogatories, was marked for identification.)

19 BY MS. SOBERATS:

20 **Q. Mr. Underwood, I have just revealed a new**
21 **exhibit, this has been marked as Exhibit MU-28. And**
22 **these are Quincy Bioscience Holding Company's Answers to**
23 **the Federal Trade Commission's Civil Investigative**
24 **Demand Interrogatories. This document is dated**
25 **September 15th, 2015. Do you see this on your screen?**

46

1 A. I do.

2 **Q. Okay. Let's turn to page 5 of this document.**
3 **And I want you to look at the answer for interrogatory**
4 **3.**

5 A. Yes.

6 **Q. According to this response, you are "part of the**
7 **marketing team" at Quincy. Can you explain your role**
8 **and responsibilities as a member of Quincy's marketing**
9 **team?**

10 A. Sure. I help to lead discussions or participate
11 in discussions, clearly with my title, there is always a
12 bit of a presumption of leadership, because some of the
13 staff, of course, you know, works for me. But anyway,
14 participating in a creative session related to any form
15 of media that we're interested in marketing through,
16 print, radio, TV, digital. That covers most everything.

17 Working on ways that we develop messaging that
18 connects with our target consumer audience. Working to
19 see that everyone does their part to develop their
20 responsibilities within the team. Sometimes bringing in
21 other team members that are not, you know, internal to
22 Quincy, but agency resources, other designers, other
23 specialized marketers.

24 And again, I don't do all that myself, but
25 that's part of the team activity and sort of, you know,

47

1 coordinating all that activities -- all those
2 activities.

3 And then working to get it to be a finished
4 advertisement and ultimately placed. You know, that
5 placement -- I don't place any ads. Ryan places
6 probably 95 percent of our ads, maybe 90 percent. And
7 see that during the process everyone gets along with
8 everyone else.

9 **Q. The Ryan that you just mentioned, is that Ryan**
10 **Liebl?**

11 A. Yeah. Yeah.

12 **Q. Thank you.**

13 (Deposition Exhibit Number MU-29, 8/24/16
14 Richards Group Correspondence, was marked for
15 identification.)

16 BY MS. SOBERATS:

17 **Q. I have just marked Exhibit MU-29, that should**
18 **show up on your screen. And this is Bates stamped**
19 **QUI-FTCN-00171215. Mr. Underwood, do you see this**
20 **document on your screen?**

21 A. I do.

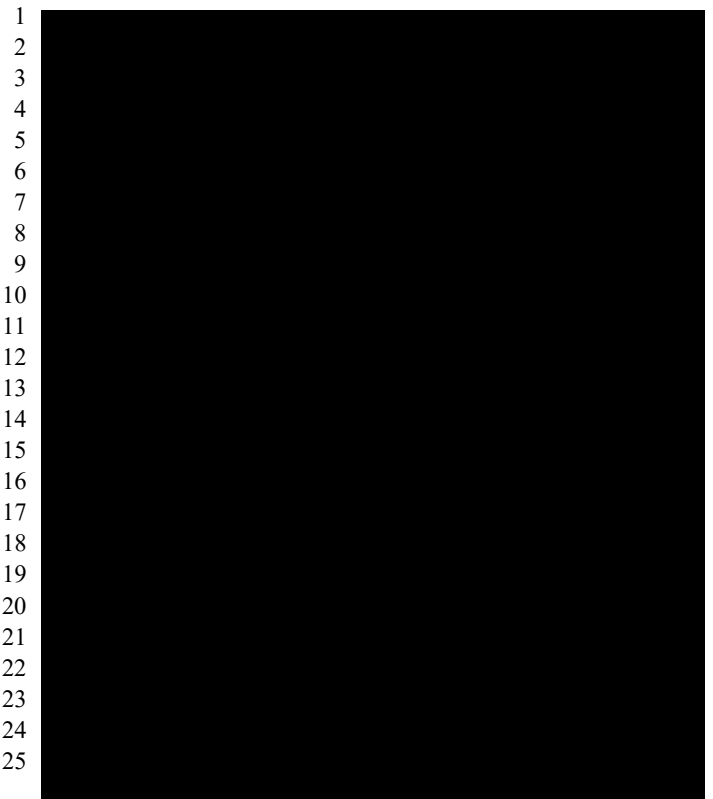
22 **Q. And do you recognize it?**

23 A. I do.

24 **Q. What is it?**

25 A. Well, it's a communication between Quincy

48



12 (Pages 45 to 48)

53

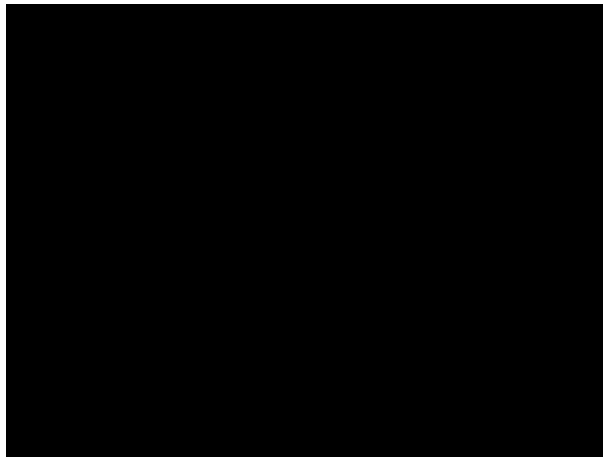
1 conducted entirely in-house now?

2 A. What do you mean by advertising functions?

3 Buying the media?

4 **Q. Right, and creating -- putting together**
 5 **advertising creatives, disseminating those**
 6 **advertising -- new advertisements.**

7 A. We -- we buy our own media, so that's done
 8 in-house. But I mean, that's always been done in-house.
 9 Developing creatives is done in-house, like I mentioned,
 10 sort of the collaborative work of our marketing team.



54



55

1 Underwood/Olson/Seney Email Exchange, was marked for
 2 identification.)

3 BY MS. SOBERATS:

4 **Q. And I have just marked a new exhibit, Mr.**
 5 **Underwood, this is Exhibit MU-30. It is Bates stamped**
 6 **QUI-FTCN-00164660. Do you recognize this document?**

7 A. Yes.

8 **Q. What is it?**

9 A. It's email correspondence or a chain between
 10 myself, Todd and Ryan Seney looking at -- I guess I'd
 11 call it packaging. Packaging edits.

12 **Q. Okay, and who is Ryan Seney?**

13 A. Ryan Seney at this time was the former employee,
 14 he used to do some of our graphics in-house and he left
 15 to start his own -- I guess his own shingle. And so he
 16 continued to help us out with some of our graphics
 17 needs, but under his own -- his own company name.

18 **Q. And would that company be Burn United Records,**
 19 **LLC?**

20 A. Yes. He was in a band, he was really excited
 21 about doing graphics for different bands.

22 **Q. Okay.**

23 A. But he continued to do some graphics for us,
 24 too.

25 **Q. Does Quincy have a business relationship with**

56

1 **Burn United Records, LLC?**

2 A. We don't anymore, no, but we did for a while,
 3 yeah.

4 **Q. And what was the nature of that relationship?**

5 A. We paid him hourly as a 1099 employee to adjust
 6 our labeling or do some -- I'll call him a -- he did
 7 projects for us, and this was mostly in an interim
 8 between us having a full-time person in-house. So I
 9 think he did this for us for maybe a year.

10 **Q. Okay. And I'd like you to go to page 2, and**
 11 **locate the email that you sent to Ryan on February 25th,**
 12 **2016 at 10:07 a.m.**

13 A. Whoops. Okay.

14 **Q. So, Mr. Underwood, in this email, I see various**
 15 **bullet points to Mr. Seney with very specific edits that**
 16 **you wanted to be made to Prevagen's packaging. Do you**
 17 **see those bullets?**

18 A. Yes.

19 **Q. And why were you asking for these changes in**
 20 **2016?**

21 A. Which particular change?

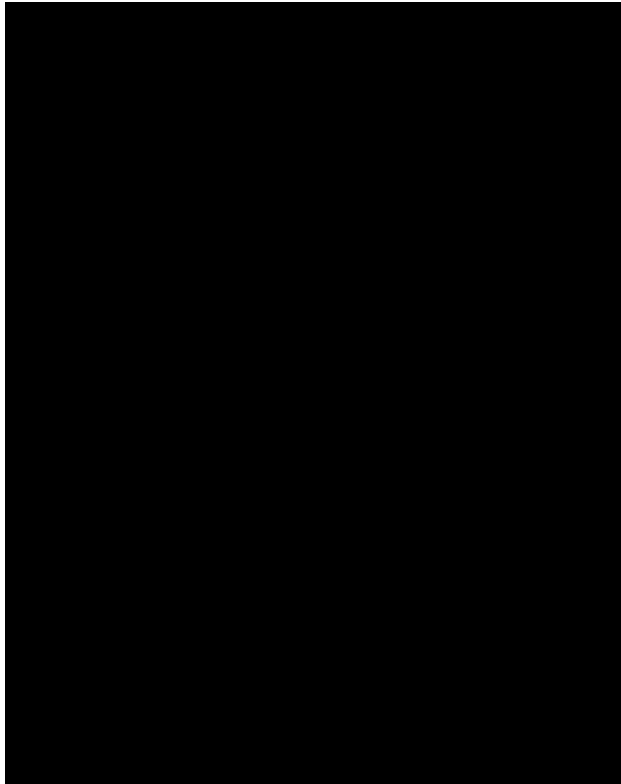
22 **Q. All of these.**

23 A. All of them?

24 **Q. Why so many changes to the packaging of**
 25 **Prevagen -- of the Prevagen products in 2016?**

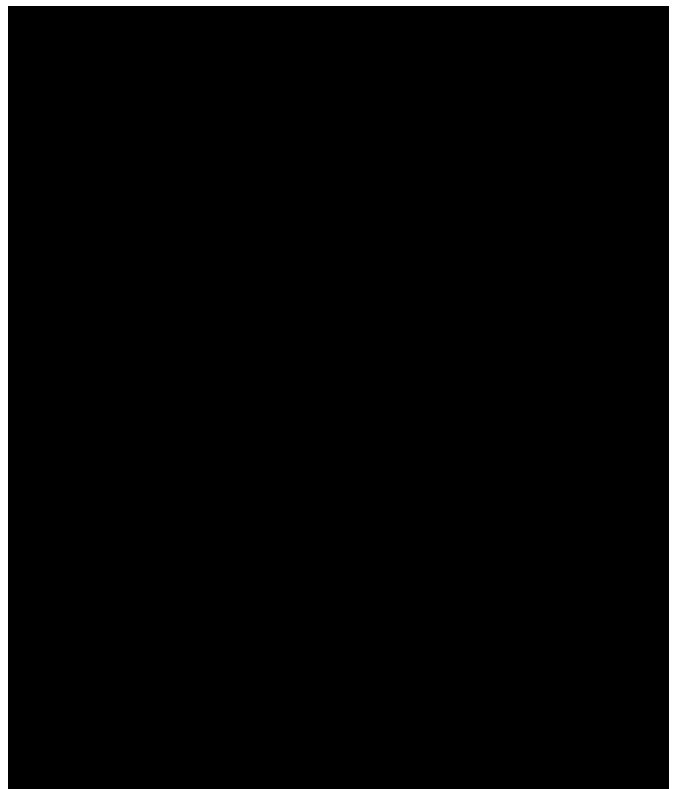
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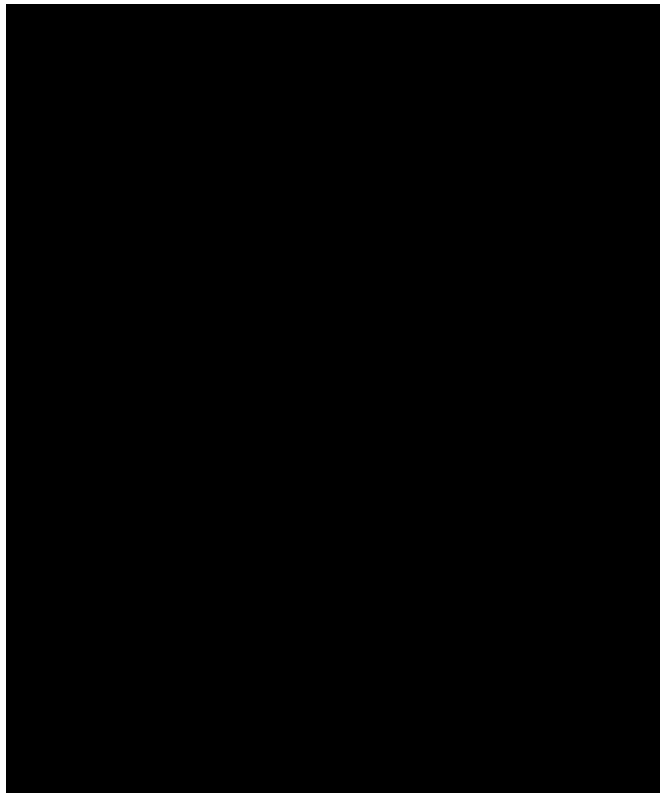
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1 BY MS. SOBERATS:
2 **Q. And did you approve edits to Prevagen's**
3 **packaging?**
4 A. I would be one of the people that approved edits
5 to Prevagen's packaging, but not the sole individual.
6 **Q. Who else would approve edits to Prevagen's**
7 **packaging?**
8 A. Internally, people that are part of our
9 marketing and advertising team, as well as counsel.
10 **Q. Does Mr. Beaman approve edits to Prevagen's**
11 **packaging?**
12 A. He does not.
13 **Q. Is he consulted before substantive changes to**
14 **Prevagen's packaging?**
15 A. He is not.
16 **Q. Let's talk about the Brain Health Guide for a**
17 **few moments. Have there been five editions to the Brain**
18 **Health Guide?**
19 A. I don't know exactly.
20 **Q. Okay. Have you authored all of the editions of**
21 **the Brain Health Guide?**
22 A. I have not.
23 **Q. Who else has authored them?**
24 A. We have different content contributors, both
25 inside the company and outside the company.

69

1 **Walgreens or CVS, is that an example of branded**
2 **advertising?**

3 A. Yes.

4 **Q. And why was the decision made to transition to**
5 **branded advertising in the spring of 2014?**

6 A. It was a more scalable business model, because
7 we had increased retail distribution, and would be
8 better -- the consumers would be better served to
9 purchase Prevagen because it was basically, you know, in
10 their neighborhood now instead of having to be ordered
11 from us directly and shipped to them to their household,
12 for instance.

13 **Q. And do you recall which retail partners Quincy**
14 **had at the time that you made this transition?**

15 A. Well, not in their entirety. We had Walgreens,
16 RiteAid and CVS would probably be the three largest at
17 the time.

18 **Q. Okay.**

19 A. We have -- we have a couple of thousand
20 accounts, so --

21 **Q. Understood.**

22 A. Yeah, okay.

23 **Q. So in the spring of 2014, I have that year**
24 **right, correct? 2014?**

25 A. I think you do.

70

1 **Q. Okay.**

2 A. If I have it correct, you have it correct.

3 **Q. Okay, I just wanted to make sure I was being**
4 **consistent with what you said.**

5 A. Yeah.

6 **Q. So spring of 2014, was that when Quincy moved**
7 **away from the use of infomercials?**

8 A. We transitioned from the direct response model
9 to the branded model, yeah. So that would include the
10 infomercial. Or the cessation of the infomercial.

11 **Q. Okay. And the Better Memory Show, was that**
12 **disseminated nationally?**

13 A. It was in local markets and then it was on some
14 cable networks. So the answer would be yes and no,
15 depending on the media buy.

16 **Q. Okay, and which local markets are we talking**
17 **about?**

18 A. Dozens of local markets.

19 **Q. Was New York one of the local markets?**

20 A. It probably was.

21 **Q. And which cable market are we talking about?**

22 A. Well, I would -- I'll give you an example. Like
23 if you purchased time on, let's say Discovery, the
24 Discovery Channel, that would be a national network, but
25 at the same time that we would buy a Discovery Channel

71

1 slot, we may also buy a Houston, Texas spot. And so --

2 **Q. Okay.**

3 A. -- every day or week was different. So we had a
4 mix of local and national spots.

5 **Q. And was the Better Memory Show only disseminated**
6 **on TV or was it also disseminated via Internet?**

7 A. You know, it probably was on YouTube, but that's
8 not really broadcast. I mean, so it was on -- I think
9 it was on YouTube, yeah.

10 **Q. Did it ever appear on any of Quincy's websites?**

11 A. It might have, but I think technically, you
12 would have to link to YouTube to watch it.

13 **Q. Okay.**

14 A. I think that's probably a little bit behind the
15 curtain of how it actually works, but --

16 **Q. And you appeared in the Better Memory Show,**
17 **correct?**

18 A. I did.

19 **Q. Who selected Teri Barr and Cyndi Edwards as the**
20 **host of the Better Memory Show?**

21 A. Well, we had worked with Teri -- Teri was a
22 journalist, and Teri had interviewed me back in the
23 early years of the company before Prevagen -- with
24 Prevagen, when we were just doing the research. And she
25 reported on the company. And so I got to know her back

72

1 in like 2005 or '06, or I don't recall exactly when.

2 And we had kept in touch, and she was really interested
3 in what we did, because, you know, she followed the
4 science, she followed the development of things ever
5 since, you know, we started out in just the lab and just
6 in rodents.

7 And then we connected for the opportunity to
8 work on the infomercial together and we talked about it,
9 our advertising team and her, and it was a good fit
10 because she had a genuine interest in the product, and
11 it wasn't -- it wasn't new to her, so she was keenly
12 interested in it. And that's how we chose Teri.

13 **Q. And Cyndi Edwards, who chose her as the host?**

14 A. We came to know her through a TV station in
15 Tampa, but I don't remember the specific details. I'm
16 not sure if they interviewed me on -- on their show and
17 then we decided to work together on the infomercial
18 together, but involved in making the decision was the
19 same people on our advertising team, myself, Tom Dvorak,
20 but I don't recall those circumstances. I hadn't known
21 Cyndi for as many years as I knew Teri.

22 **Q. Do you recall the show that Cyndi Edwards was**
23 **doing at the time where you appeared for an interview?**

24 A. I don't.

25 **Q. And was the Better Memory Show done in-house or**

73

1 **did you work with a third party?**

2 A. Well, when we did it with Teri, we brought in a
3 production team to film the show, and then when we did
4 it with Cyndi, we used their studio, and it was near
5 Tampa. And I want to say the name of her show was like
6 Good Day Tampa, or -- I don't know, Morning Sunshine
7 Tampa.

8 **Q. And the Better Memory Show with Cyndi as the**
9 **host, that was disseminated, correct?**

10 MR. CASTELLO: Objection.

11 THE WITNESS: Yeah.

12 BY MS. SOBERATS:

13 **Q. Your answer is yes?**

14 A. Yes, it is.

15 **Q. Okay. We haven't -- the reason I'm asking is**
16 **because we haven't received dissemination information on**
17 **that version of the Better Memory Show, Mr. Castello, so**
18 **I will be talking with you about that later.**

19 **So you said you brought a production team on**
20 **board for the taping with Teri Barr.**

21 A. Um-hmm.

22 **Q. Which production team was that?**

23 A. Gee. They were based here in Madison, but I
24 can't remember their name.

25 **Q. Okay. And where was the Better Memory Show**

74

1 **taped when you had Teri Barr as the host?**

2 A. Here in Madison.

3 **Q. And who wrote the script for the Better Memory**
4 **Show?**

5 A. We did internally, with Teri's assistance.

6 **Q. Were you involved in drafting the script?**

7 A. Well, I had to answer the questions she asked,
8 so a lot of the script was done like a real interview.

9 **Q. Okay.**

10 A. So my lines weren't necessarily pre --
11 prewritten. I wasn't reading off of a teleprompter.

12 **Q. So you were speaking in the moment when --**
13 **during this --**

14 A. Yeah, yeah. I mean, not that it wasn't, you
15 know, thought about, but it wasn't scripted.

16 **Q. And, Mr. Underwood, you're referred to as a**
17 **neuroscientist throughout the Better Memory Show, and**
18 **you were introduced as a neuroscientist, but we**
19 **previously discussed that you never obtained a formal**
20 **neuroscience degree. So why did the infomercial refer**
21 **to you as a neuroscientist?**

22 MR. DELEEUW: Object to the form.

23 THE WITNESS: Well, in my capacity here at
24 Quincy, I've sponsored more research than many people
25 that are in academics with degrees related to the

75

1 neurosciences.

2 BY MS. SOBERATS:

3 **Q. And this next question relates to a point you**
4 **made earlier about your direct response advertising.**
5 **The infomercial featured a toll-free number that viewers**
6 **could call to place an order, and I actually have that**
7 **number here, it's 888-928-1928. Is that a number that**
8 **would route callers to Quincy Bioscience?**

9 A. I'm not sure. We used dozens of different
10 numbers.

11 **Q. So when consumers called those toll-free**
12 **numbers, where were they led to?**

13 MR. CASTELLO: Objection.

14 THE WITNESS: To our internal call center.

15 BY MS. SOBERATS:

16 **Q. Okay.**

17 A. And at times to external call centers.

18 **Q. Okay.**

19 A. But usually our own.

20 **Q. And --**

21 A. We found that working with others, which we did
22 in the very beginning, we didn't have the quality of
23 person on the phone that we wanted, and so that's why we
24 did it in-house.

25 **Q. Do you recall --**

76

1 A. We answered the calls in-house. Sorry.

2 **Q. Do you recall the time period in which calls**
3 **were answered in-house?**

4 A. Well, we still answer calls in-house.

5 **Q. But calls --**

6 A. So -- I mean, so we still -- we still get people
7 to call some of those same numbers that we haven't
8 advertised in about six years.

9 **Q. But at the time that you had your direct**
10 **response marketing -- well, the time frame during which**
11 **you had these toll-free numbers would have been the time**
12 **frame that you -- that Quincy used its direct response**
13 **marketing. Is that correct?**

14 MR. CASTELLO: Objection.

15 THE WITNESS: Well, the phone numbers are still
16 being called by consumers that saw ads literally six
17 years ago. So that activity still happens, although
18 it's -- it's not -- those phone numbers still -- excuse
19 me, those phone numbers aren't currently displayed in
20 advertising, yet consumers still call based off of that
21 older advertising.

22 BY MS. SOBERATS:

23 **Q. So who at Quincy answers calls from consumers?**

24 A. Our account managers.

25 **Q. Okay. And do they use scripts during their**

85

1 A. Yeah.

2 **Q. And I'd like you to turn to page 6, and just for**
 3 **the record, these are Defendant Quincy Bioscience**
 4 **Holding Company, Inc.'s Responses -- Answers to the**
 5 **FTC's Civil Investigative Demand Interrogatories. If**
 6 **you go to page 6, Mr. Underwood, I'd like you to look at**
 7 **interrogatory 4. The answer lists you, Mark Underwood,**
 8 **as president and it states that you're involved in**
 9 **translation of scientific data into marketing language.**
 10 **Can you explain to me what that means?**

11 A. Sure. You've read a lot of our research, and
 12 you probably would also agree and recognize that some of
 13 the topics that we research don't roll off the tongue
 14 real clearly if you don't have a background in
 15 neurosciences. And so we try to make that messaging
 16 connect with people that don't have Ph.D.s. So in a
 17 sense we need to make sure that the things we learn in
 18 the lab are translated into appropriate consumer
 19 language.

20 So part of that is for just clear communication,
 21 and part of that is probably more importantly to make
 22 sure that we don't overextend or overpromise the type of
 23 claim that we're making from research because, as you
 24 know, there are different agencies that are in charge of
 25 such, and we're never looking to be on the bad side of

86

1 them. So if data comes out of a lab that maybe shows
 2 some sort of like -- I'll call it a disease-like
 3 response, or dizzy -- treatment like, you know, status,
 4 even though that's scientifically valid, we have to make
 5 sure that we don't convey that to a consumer because it
 6 would become an issue with perhaps the Food and Drug
 7 Administration.

8 So part of it is, again, you knew, clear
 9 communication to the consumer, and part of it is making
 10 sure that we know our audience so that we don't break a
 11 rule when it comes to sharing what we might have
 12 learned, we don't necessarily have the right to share
 13 that fully with a consumer audience because of the
 14 regulations we fall under.

15 **Q. And you're involved in this process that you've**
 16 **just described?**

17 A. I am, in conjunction with counsel. But yes.

18 **Q. Is Mr. Beaman involved in this process?**

19 A. No, he is not. To add, our entire team is
 20 involved in this process in terms of our marketing and
 21 advertising personnel, and we continue to learn and we
 22 continue to take those lessons that we learn along the
 23 way and implement them into -- into our collective
 24 experience so that we do it better and better,
 25 hopefully, as time goes by.

87

1 **Q. And, Mr. Underwood, you testified earlier that**
 2 **you have communications multiple times a week with Mr.**
 3 **Underwood -- Mr. Beaman, pardon. And that you keep him**
 4 **informed on research. Why do you keep Mr. Beaman**
 5 **informed on research?**

6 A. Well, it does affect some of the bigger picture
 7 items in our company, and so I mean, he's interested in
 8 how well the company is doing. He's interested in
 9 things like, you know, what the future might hold in
 10 terms of what we're looking at developing and the path
 11 we're going for the future.

12 So, yeah, I do inform them of what's going on
 13 with research, although we do talk several times a week,
 14 we rarely talk about research because we don't have
 15 research updates several times a week. We have
 16 operational things, the basic running of the business
 17 that, you know, we might discuss, you know, one topic or
 18 the next.

19 **Q. And has he requested to have these regular**
 20 **communications with you?**

21 A. No.

22 MR. CASTELLO: Objection.

23 THE WITNESS: And by regular, they're not --
 24 they're not programmed, they're not scheduled. They're
 25 on occasion. I haven't talked with Mike on the phone

88

1 for a couple weeks, actually. At this current date.

2 BY MS. SOBERATS:

3 **Q. Has Mr. Beaman requested to have communications**
 4 **with you multiple times a week?**

5 A. No.

6 MR. DELEEUEW: Object to the form.

7 BY MS. SOBERATS:

8 **Q. And do you feel that you need to keep Mr. Beaman**
 9 **updated on developments at Quincy?**

10 MR. CASTELLO: Objection.

11 MR. DELEEUEW: Object to the form.

12 THE WITNESS: No, I don't.

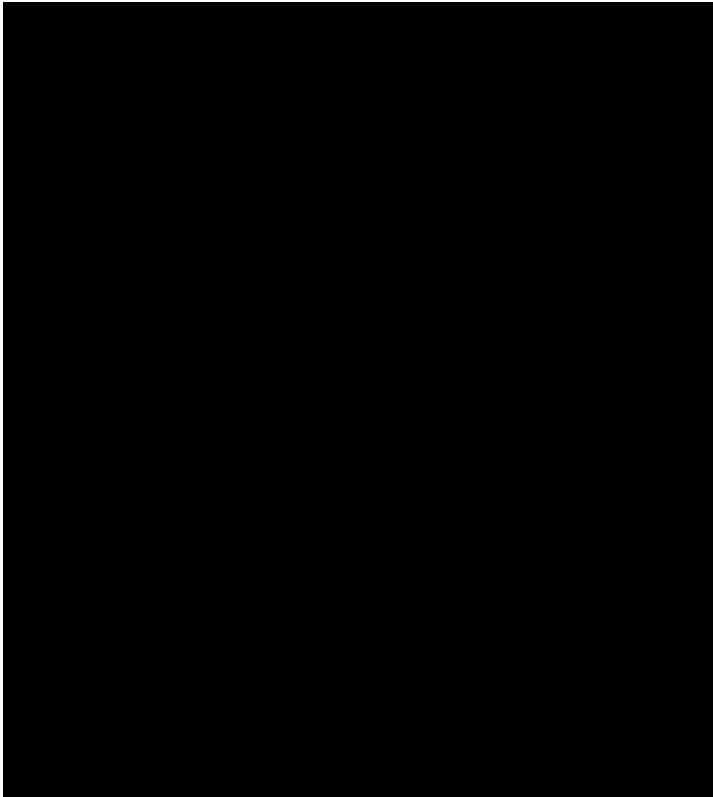
13 BY MS. SOBERATS:

14 **Q. I want to talk specifically about the Madison**
 15 **Memory Study. What was your role in that study?**

16 A. Well, similar to what we talked about for my
 17 role in other -- you know, in clinical studies and
 18 preclinical studies. The same -- the same type of
 19 thing. Helping to organize the staff that conducts the
 20 research, looking at the overall goals or aims of the
 21 study. You know, I guess participating in the concepts
 22 of what we wanted the protocol or the study goals to be,
 23 and then letting our staff execute on those goals.

24 **Q. Did you review the recruitment ads for the**
 25 **Madison Memory Study?**

213



215

1 THE WITNESS: I hope you guys have a great
2 weekend.
3 VIDEO TECHNICIAN: This concludes today's
4 deposition of Mark Underwood as an individual. Going
5 off the record at 4:24.
6 (Reading and signature reserved.)
7 (Whereupon, at 4:25 p.m., Central time; 5:25
8 Eastern time, the deposition was adjourned.)
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214

1 proceedings.)
2 VIDEO TECHNICIAN: Going on the record at 4:23.
3 MS. SOBERATS: Counsel, I am done with my
4 questions for today. I would just note for the record
5 that Plaintiffs will keep this deposition open since Mr.
6 Underwood did not answer a question pertaining to
7 research started after the Madison Memory Study that is
8 a question and answer that relates to an ongoing
9 discovery dispute that is being briefed at the Southern
10 District of New York, and we will keep this deposition
11 open pending resolution of that dispute.
12 Kate, do you -- does the New York Attorney
13 General's Office have any questions that they would like
14 to ask at this time?
15 MS. MATUSCHAK: Thank you, no, we don't have any
16 questions today, but we may have questions if and when
17 this deposition continuous.
18 MS. SOBERATS: And, counsel, do you have any
19 redirect?
20 MR. CASTELLO: This is Castello, no.
21 MR. DELEEUW: DeLeeuw, we have a couple of
22 hours. No, no, we're done. We have nothing.
23 MS. SOBERATS: Okay.
24 THE WITNESS: Thank you very much.
25 MS. SOBERATS: Thank you, Mr. Underwood.

216

1 DISTRICT OF COLUMBIA, to wit:
2
3 I, Sally Jo Quade, CERT, the officer before whom
4 the foregoing deposition was taken, do hereby certify
5 that the within-named witness personally appeared before
6 me at the time and place herein set out, and after
7 having been duly sworn by me, according to law, was
8 examined by counsel.
9 I further certify that the examination was
10 recorded stenographically by me and this transcript is a
11 true record of the proceedings.
12 I further certify that I am not of counsel to
13 any of the parties, nor an employee of counsel, nor
14 related to any of the parties, nor in any way interested
15 in the outcome of this action.
16
17 As witness my hand and notarial seal this 24th
18 day of August, 2020.
19
20
21
22 s/Sally Jo Quade
23 Sally Jo Quade, CERT
24 Notary Public
25
26 MY COMMISSION EXPIRES:
27 7/14/2023